

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VANNY TEANG,)
Plaintiff,) Case No. C09-15-RAJ-BAT
v.)
MICHAEL ASTRUE, Commissioner of the)
Social Security Administration,)
Defendant.)

Plaintiff Vanny Teang seeks judicial review of the denial of her application for supplemental security income benefits by the Commissioner of the Social Security Administration. Because the ALJ, at step two, erred in finding that plaintiff's depression, PTSD and stroke were not severe impairments, the Court recommends the Commissioner's decision be REVERSED and REMANDED for further proceedings consistent with this Report and Recommendation.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiff is a 56 years old Cambodian refugee who came to the United States in 1982. Tr. 160, 161. She has a second grade education and past work experience as a janitor. Tr. 47, 69, 81. On May 4, 2005, plaintiff applied for supplemental security income. Tr. 17. Her application was denied initially and on reconsideration. Tr. 40, 43. Plaintiff requested a hearing. Tr. 516. After conducting a hearing on April 15, 2008, the ALJ found plaintiff not disabled. Tr. 17-23. The Appeals Council denied review of that decision, making it the Commissioner's final decision.

1 under 42 U.S.C. § 405(g). Tr. 3.

2

II. THE ALJ'S DECISION

3 The ALJ applied the five-step sequential evaluation process for determining whether a
4 claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920. At step one, the ALJ found that
5 plaintiff has not engaged in substantial gainful activity since May 31, 2004, the application date.
6 Tr. 19.

7 At step two, the ALJ found that plaintiff had the following severe impairments: diabetes
8 mellitus and hypertension. *Id.*

9 At step three, the ALJ found that plaintiff did not have an impairment or combination of
10 impairments that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404,
11 Subpart P, Appendix 1. *Id.* at 21.

12 Before proceeding to step four, the ALJ found that plaintiff had the residual functional
13 capacity to perform light work. *Id.*

14 At step four, the ALJ found that plaintiff could perform her past relevant work as a janitor.
15 *Id.* at 23. Accordingly, the ALJ found that plaintiff was not disabled because she can perform her
16 past relevant work. *Id.*

17

III. STANDARD OF REVIEW

18 This Court may set aside the Commissioner's denial of disability benefits when the ALJ's
19 findings are based on legal error or not supported by substantial evidence. 42 U.S.C. § 405(g);
20 *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). "Substantial evidence" is more than a
21 scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might
22 accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 201 (1971);
23 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining

1 credibility, resolving conflicts in medical testimony, and resolving any other ambiguities that
2 might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required
3 to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment
4 for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the
5 evidence is susceptible to more than one rational interpretation, it is the Commissioner's
6 conclusion that the Court must uphold. *Id.*

7 **IV. DISCUSSION**

8 **A. The ALJ erred at step two in finding that Plaintiff's depression, PTSD, and stroke
9 were not severe impairments.**

10 Plaintiff contends she suffers from Post Traumatic Stress Disorder (PTSD), depression, and
11 had a stroke. Dkt. 11. The ALJ, at step two, however, found plaintiff had no mental disorders and
12 there was no "medically established diagnoses of stroke." Tr. 20. Plaintiff contends the ALJ erred
13 by failing to give sufficient reasons to reject the opinions of plaintiff's treating doctor, Andrea
14 Chun, M.D., and plaintiff's examining doctors, Tobias Dang, M.D., and James Czysz, PsyD. Dkt.
15 11 at 4-11.

16 Andrea Chun M.D. is plaintiff's treating doctor. Tr. 173-318. Dr. Chun diagnosed
17 plaintiff with diabetes, hypertension, depression, and post-traumatic stress disorder. Tr. 307. In
18 2004, Dr. Chun noted plaintiff had six months of insomnia, bilateral generalized weakness and
19 fatigue. In June 2004, Dr. Chun wrote plaintiff's

20 Depression continues to be a problem for her. She is no longer taking her
21 paxil . . . She admits to having some nightmares that interrupt her sleep
22 related to memories of the khymer. She denies being physically harmed
herself but continues to have visions of the dead bodies and starvation
she experienced. She also endorsed depressed mood, anhedonia and easy
agitation.

23 Tr. 231. Dr. Chun opined that plaintiff "clinically appears depressed and she has symptoms of

1 PTSD as well.” Tr. 231. Dr. Chun’s medical records also indicate that CT scans of plaintiff’s
2 head, taken in 2003 and 2005, show plaintiff has suffered from bilateral lacunar infarctions, a type
3 of stroke. Tr. 280 293.

4 Generally, the ALJ must give the opinions of treating physicians greater weight than the
5 opinions of other doctors such as examining or non-examining doctors. Treating physicians are
6 employed to cure and therefore have a greater opportunity to know and observe the claimant.
7 *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir.1996). To reject an uncontradicted opinion of a
8 treating or examining doctor, an ALJ must state clear and convincing reasons that are supported by
9 substantial evidence. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir.1995). If a treating or
10 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only reject it
11 by providing specific and legitimate reasons that are supported by substantial evidence. *Id.*

12 Although Dr. Chun is plaintiff’s treating physician, the ALJ’s decision fails to mention Dr.
13 Chun, her treatment of plaintiff, or her opinion that plaintiff suffers from depression and PTSD.
14 The ALJ may not reject Dr. Chun’s opinions, without providing clear and convincing or specific
15 and legitimate reasons, nor may he reject the doctor’s opinions without considering and
16 commenting on them. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). Accordingly, the
17 Court finds the ALJ’s conclusion that plaintiff does not suffer from depression and PTSD is not
18 supported by substantial evidence because the ALJ did not give any reasons for rejecting Dr.
19 Chun’s diagnoses.

20 Tobias Dang, M.D. and James Czysz, PsyD. performed psychiatric and psychological
21 evaluations. Tr. 19. Dr. Dang diagnosed plaintiff with “depressive disorder status post stroke, and
22 dementia status post stroke, with a GAF score of 45.” Tr. 19. Dr. Czysz diagnosed plaintiff with
23 “depression NOS, cognitive disorder NOS, and rule out post traumatic stress disorder, with a

1 Global Assessment of Functioning score of 40.” *Id.* The Commissioner argues because plaintiff
2 made fraudulent statements to the doctors, the ALJ properly rejected the doctors’ opinions
3 pursuant to 42 U.S.C. § 1383(e)(7)(iii). Dkt. 13 at 8-10. However, the ALJ neither found plaintiff
4 had committed fraud nor stated he was relying on § 1383(e)(7)(iii) as grounds to reject the doctors’
5 opinions. Accordingly, the Court concludes that section was not the basis for the ALJ’s decision.

6 Instead, the Court concludes the ALJ rejected the doctors’ opinions because the ALJ found
7 the evidence showed plaintiff was functioning at a higher level than found by the doctors. Tr. 20.
8 That evidence includes plaintiff’s gambling activities, her ability to travel to and from casinos,
9 going to the gym to exercise 20 to 60 minutes each day, and being “busy with her grandson.” Tr.
10 20. These are specific and legitimate reasons that are supported by substantial evidence to reject
11 the doctors’ opinions regarding depression and PTSD as severe impairments. However, these
12 reasons do not cure the ALJ’s error in failing to provide reasons for rejecting Dr. Chun’s diagnosis
13 and opinions.

14 The ALJ also rejected Dr. Dang’s opinions about plaintiff’s stroke finding “there is almost
15 nothing in the medical record regarding the claimant’s alleged cardiovascular accident.” *Id.*
16 However, CT scans of plaintiff’s head, taken in 2003 and 2005, establish plaintiff has suffered
17 from bilateral lacunar infarctions, a type of stroke. Tr. 280 293. The 2003 CT report states that
18 “[t]here are at least five bilateral, small, rounded, periventricular hypodensities that likely represent
19 old lacunar infarcts.” Tr. 293. The 2005 CT reports “[d]oes have old lacunar infarcts.” Tr. 280.
20 Accordingly, the ALJ’s conclusion that plaintiff “does not have a medically established diagnoses
21 of CVA” is not supported by substantial evidence and erroneous.

22 At step two of the evaluation process, plaintiff must simply show that she suffers from
23 impairments that impose more than *de minimis* restrictions on her ability to perform basic work

1 functions. This slight showing was demonstrated with respect to plaintiff's depression, PTSD, and
2 diagnoses of stroke or SVA. Accordingly, the ALJ erred at step two and remand is appropriate.

3 The Court will not address the other issues plaintiff raised because the case should be
4 remanded for further proceedings at step two. On remand, the ALJ will necessarily have to
5 reevaluate plaintiff's credibility, the credibility of lay witnesses, plaintiff's residual functional
6 capacity, and whether evidence from a vocational expert is warranted, all of which relate to the
7 other issues presented in this appeal.

8 **V. CONCLUSION**

9 Because the ALJ, at step-two, erred by failing to provide legally sufficient reasons for
10 rejecting the opinions regarding plaintiff's depression, PTSD and stroke, the Court recommends
11 the case be REVERSED and REMANDED for further proceedings consistent with this Report.

12 On remand, the ALJ should reevaluate the medical evidence regarding plaintiff's mental
13 impairments, reconsider whether plaintiff's impairments meet or equal the listings of mental
14 impairments, and, if necessary, reevaluate plaintiff's residual functional capacity, including calling
15 a vocational expert if warranted. The ALJ should also reevaluate the testimony of the lay
16 witnesses and plaintiff. The ALJ should take any other actions necessary to develop the record.
17 With this information, the ALJ should reassess whether plaintiff's impairments render her disabled
18 for purposes of the Social Security Act. A proposed order accompanies this Report and
19 Recommendation.

20 DATED this 17th day of July, 2009.

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23 BRIAN A. TSUCHIDA
United States Magistrate Judge